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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,162

Applicant(s)

BAXTER ET AL

Examiner

Joseph S. Del Sole

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1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to an apparatus, classified in class 425, subclass 112.
  - II. Claims 10-18, drawn to a process, classified in class 264, subclass 40.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus can be used to practice another and materially different process. The apparatus as claimed reads on a guillotine style blade mounted at the mouth of an extruder that could be used to separate an extrudate into desired lengths.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Robert Lambrechts (by David Beck) on April 25, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the upper surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 4, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Needleman (3,796,532).

Needleman teaches an apparatus (Fig 1) having a member mounted on a fixture (Fig 1, #18), the member configured for receiving the product (Fig 1) exiting the fixture;

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means for selectively modifying the configuration of the member from a first position to a second position so that as the product is received by the member a dimension of the product is modified (Fig 1); the member has an outer member (Fig 1, #26) with a first (Fig 4, #26, the first portion surrounding #53) and second leg (Fig 4, #25, the second portion surrounding #53), and an inner member (Fig 1, #45), the inner member slidably disposed between the first leg and second leg of the outer member; the inner member has an overhanging plate (Fig 1, the portion creating slot portion #51) detachably secured to the upper surface; the means for selectively modifying the configuration of the member is a screw (Fig 1, the threaded portion of #52) in threaded engagement with the overhanging plate (through #55) and in proximate contact with a substantially horizontal surface of either outer member (Fig 1) so that upon rotation of the screw the inner member is slidably urged from the first position to the second position; the member is attached to the fixture with dowel pins (Fig 1, #s 30 and 41).

10. Claims 1, 2, 4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Yada et al (5,837,297).

Yada et al teach an apparatus having a member (Fig 7, #s 33 and 33a) mounted on a fixture (Fig 7, #3), the member configured for receiving the product exiting the fixture; means for selectively modifying the configuration of the member from a first position to a second position so that as the product is received by the member a dimension of the product is modified (Fig 7); the member has an outer member with a first and second leg (Fig 7, #33a), and an inner member (Fig 7, #33), the inner member slidably disposed between the first leg and second leg of the outer member; the inner

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member (Fig 7, #33) has an overhanging plate (Fig 7, #33b) detachably secured to the upper surface; the member is attached to the fixture with dowel pins (Fig 7, the pins securing #33a to the fixture).

11. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Fenati (1,854,788).

Fenati teaches an apparatus (Fig 1) having a member (Fig 1, #s 7 and 5) mounted on a fixture (Fig 1, #s 5 and 7 are inherently interconnected with A, the fixture), the member configured for receiving the product exiting the fixture (Fig 1); means for selectively modifying the configuration of the member from a first position to a second position (Fig 1, the rotation of #5) so that as the product is received by the member a dimension of the product is modified (Fig 1).

#### ***Allowable Subject Matter***

12. Claims 3, 5, 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest a position altering member in relation to a extruding fixture, wherein the member has first and second leg outer members and a slidable inner member therebetween, wherein the members have an upper surface and a shaping means opposite the upper surface.

#### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571)

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272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Benjamin Utech, can be reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

*Joseph Saeel Saeel*

J.S.D.  
May 5, 2005